

_____ ,	:	Case No. _____
	:	
Plaintiff(s)	:	Judge Michael R. Barrett
	:	
v.	:	
	:	<b>JOINT FINAL PRETRIAL ORDER</b>
_____ ,	:	<b>(REQUIRED FORM)</b>
	:	
Defendant(s)	:	

I. APPEARANCES:

For Defendant:

A. This is an action for\_\_\_\_\_.

C. The jurisdiction of the Court (is/is not) disputed.

A. The estimated length of trial is \_\_\_\_ days.

- B. Trial to (the Court/a jury) has been set for \_\_\_\_\_, 200\_\_\_\_, pursuant to the General Order on Trial Assignment.

Or:

A trial assignment will be made by the Court at a future date.

- C. Three sets of each party's exhibits shall be delivered to Chambers at least three (3) days prior to the start of trial, this includes one original and two copies.

IV. AGREED STATEMENTS AND LISTS:

A. General Nature of the Claims of the Parties

1. Plaintiff Claims:

*Set out brief summary without detail; an itemized statement of special damages should be included.*

2. Defendant Claims:

*Set out brief summary without detail.*

3. All other parties' claims:

*Same type of statement where third parties are involved.*

B. Pending Motions/Motions in Limine:

1. The following Motions, if any, are pending:

*Briefly list motions pending and identify which motions must be decided prior to trial.*

2. Plaintiff anticipates/does not anticipate filing Motions in Limine.

*If filing Motions in Limine, briefly list the motions that are expected to be filed.*

3. Defendant anticipates/does not anticipate filing Motions in Limine.

*If filing Motions in Limine, briefly list the motions that are expected to be filed.*

Motions in Limine must be filed at least seven (7) business days prior to the commencement of trial.

C. Uncontroverted Facts

**Suggested language:**

The following facts are established by admissions in the pleadings or by stipulations of counsel:

*Set out uncontroverted or uncontested facts.*

The parties request and/or anticipate that the following stipulated facts be read by Judge Barrett to the jury:

*Set out stipulated facts to be read to the jury.*

D. Contested Issues of Fact and Law

**Suggested language:**

1. Contested Issues of Fact: The contested issues of fact remaining for decision are:

*Set out a brief statement of the remaining contested issues of fact.*

2. Contested Issues of Law: The contested issues of law in addition to those implicit in the foregoing issues of fact, are:

*Set out a brief statement of the remaining contested issues of law.*

Or: There are no special issues of law reserved other than those implicit in the foregoing issues of fact.

E. Witnesses

**Suggested language:**

1. In the absence of reasonable notice to opposing counsel to the contrary, plaintiff will call, or will have available at the trial:

*Provide a brief individualized synopsis of each witness'*

*testimony.*

2. In the absence of reasonable notice to opposing counsel to the contrary, defendant will call, or will have available at the trial:

*Provide a brief individualized synopsis of each witness' testimony.*

3. In the absence of reasonable notice to opposing counsel to the contrary, \_\_\_\_\_ will call:

*Provide a brief individualized synopsis of each witness' testimony. (Use for third parties, if any).*

4. There is reserved to each of the parties the right to call such rebuttal witnesses as may be necessary, without prior notice thereof to the other party.

*Note: Only witnesses listed in the Pretrial Order or identified in accordance with paragraph 4 above will be permitted to testify at the trial, except witnesses called solely for purpose of impeachment or for good cause shown.*

F. Expert Witnesses

**Suggested language:**

Parties are limited to the following number of expert witnesses whose names have been disclosed to the other side.

Plaintiff:

*List all expert witnesses plaintiff intends to call at trial.*

Defendant:

*List all expert witnesses defendant intends to call at trial.*

Counsel have attached a resume of each expert's qualifications as Appendix A herein.

G. Exhibits

Needless Court time is taken up in the marking of exhibits during trial. Accordingly, the exhibit list should be prepared prior to trial and set forth in the pretrial order. Plaintiff's exhibits shall be marked as "PX#" and Defendant's exhibits shall be marked as "DX#". Exhibit markers should be attached to all exhibits at the time they are shown to opposing counsel during the preparation of the pretrial order. A supply of marking tags for exhibits may be obtained from the Clerk's Office. They should be attached to the lower right-hand corner whenever possible.

Except for good cause shown, the Court will not permit the introduction of any exhibits unless they have been listed in the pretrial order, with the exception of exhibits to be used solely for the purpose of impeachment.

Exhibit lists shall be in the form set forth in the example attachment hereto.

Exhibit lists should be attached as appendices to the pretrial order as follows:

Appendix B Joint Exhibits

Appendix C Plaintiff Exhibits

Appendix D Defendant Exhibits

Appendix E Third-Party Exhibits

H. Depositions

**Suggested language:**

Testimony of the following witnesses will be offered by deposition/videotape:

*List all witnesses whose testimony will be offered by deposition or videotape. If none, so state.*

Please list any anticipated objections to the above witnesses to be offered by deposition/videotape.

*List any anticipated objections to the above witnesses to be offered by deposition/videotape. If none, so state.*

I. Completion of Discovery

Except for good cause, all discovery shall be completed before the Final Pretrial Order is signed by the Court. If discovery has not been completed, the proposed pretrial order shall state what discovery is yet to be done by each side, when it is scheduled, when it will be completed, and whether any problems, such as objections or motions, are likely with respect to the uncompleted discovery.

**Suggested language:**

Discovery has been completed.

Or: Discovery is to be completed by \_\_\_\_\_, 20\_\_.

Or: Further discovery is limited to\_\_\_\_\_.

Or: The following provisions were made for discovery:

*Specify all such provisions.*

J. Miscellaneous Orders

*Set forth any orders not properly includable elsewhere.*

V. MODIFICATION

This Final Pretrial Order may be modified at the trial of this action, or prior thereto, to prevent manifest injustice. Such modification may be made by application of counsel or on motion of the Court.

VI. JURY INSTRUCTIONS AND STATEMENT

If there are no dispositive motions pending, then the Jury Instructions, including interrogatories and special verdict forms shall be submitted by email, in WordPerfect format, to [barrett\\_chambers@ohsd.uscourts.gov](mailto:barrett_chambers@ohsd.uscourts.gov) contemporaneously with the submission of this Proposed Final Pretrial Order.

If there are pending dispositive motions, then the preliminary Jury Instructions, including interrogatories and special verdict forms shall be submitted by email, in WordPerfect format, to [barrett\\_chambers@ohsd.uscourts.gov](mailto:barrett_chambers@ohsd.uscourts.gov) at least ten (10) business days prior to the commencement of trial.

In addition, all of the above shall be electronically filed in the Clerk's Office

contemporaneously with the submission to Chambers. There is reserved to counsel the right to submit supplemental requests for instructions during trial, or at the conclusion of the evidence, but only on matters that cannot be reasonably anticipated.

The parties shall submit joint instructions in the form set forth in the example attached hereto. Each instruction should be on a separate page and be presented jointly with agreed language to be in a normal type, Plaintiff's proposed language to be in italics and Defendant's proposed language to be in bold. All instructions must contain a citation of authority (including the page number for the specific legal proposition for which you are citing the case) upon which counsel relies. A request for special instructions must be filed with the Clerk of Court's Office, prior to presentation to the Court.

The parties shall jointly prepare a statement of the case to be read by Judge Barrett to the jury at Voir dire. This statement shall be emailed to Chambers at [barrett\\_chambers@ohsd.uscourts.gov](mailto:barrett_chambers@ohsd.uscourts.gov) three (3) days prior to the commencement of trial.

VII. SETTLEMENT EFFORTS

*Set forth circumstances surrounding the parties' efforts to negotiate a settlement.*

VIII. TRIAL TO THE COURT

**Proposed Findings of Fact & Conclusions of Law:** Contemporaneously with the submission of this proposed Final Pretrial Order, the parties separately shall file those Findings of Fact and Conclusions of Law that each counsel believes the Court should make.

IX. JURY TRIAL

Do the parties anticipate the need for trial briefs on particular legal issues? If so, please state the particular legal issues.

X. INSTRUCTIONS

This proposed Final Pretrial Order shall be emailed, in WordPerfect format, to Chambers at [barrett\\_chambers@ohsd.uscourts.gov](mailto:barrett_chambers@ohsd.uscourts.gov) at least five (5) business days prior to the Final Pretrial Conference. It should not be filed with the Clerk's office.

**IT IS SO ORDERED.**

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MICHAEL R. BARRETT  
United States District Judge

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Counsel for Plaintiff

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Counsel for Defendant



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

	:	Case No. _____
	:	
Plaintiff(s)	:	Judge Barrett
	:	
v.	:	
	:	<b>EXHIBIT LIST</b>
	:	(Example)
	:	
Defendant(s)	:	

Exhibit No.	Date Offered & By Whom	Admitted	Bates #	Date	Description
PX1					
PX2					
PX3					
PX4					

(EXAMPLE)<sup>1</sup>  
JURY INSTRUCTION NO. 7  
CIRCUMSTANTIAL EVIDENCE<sup>2</sup>

Generally speaking, two types of evidence may be presented during a trial—direct evidence and indirect evidence, which is commonly called circumstantial evidence.

“Direct evidence” is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. **If a witness testifies that he saw it raining outside, and you believe him, that would be direct evidence that it was raining.**

“Circumstantial evidence” is proof of a chain of facts or circumstances that indirectly prove a fact. *By circumstantial evidence is meant the proof of certain facts and circumstances in a given case from which a jury may infer other connected facts, which usually and reasonably follow according to the common experience of mankind. The credibility of witnesses detailing circumstances in evidence, or the weight of such circumstances, if the jury find that they occurred, are to be determined solely by you.*<sup>3</sup>

**If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you might conclude that it was raining.**

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<sup>1</sup>This is just an example and is not to be viewed as the Court’s desired instruction on circumstantial evidence.

<sup>2</sup>Authority: O’Malley, et al. Federal Jury Practice and Instruction, § 171.46 (citing, in part, Instruction No. 3.6, Manual of Model Civil Jury Instructions for the District Courts of the Ninth Circuit (1997)); ABA, Model Jury Instructions: Employment Litigation, § 1.02[3] (2d ed. 2005).

<sup>3</sup>Markley v. Hudson (1944), 143 Ohio St. 163, 28 O.O. 81, 54 N.E.2d 304, 3-317, OJI § 317.15.